

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRESCOTT PRESLEY,

Petitioner,

v.

Civil Case Number 24-11751
Criminal Case Number 20-20251
Honorable David M. Lawson

UNITED STATES OF AMERICA,

Respondent.

ORDER DISMISSING MOTION TO VACATE SENTENCE

On December 16, 2020, petitioner Prescott Presley pleaded guilty to a charge of unlawfully possessing a firearm as a convicted felon in violation of 18 U.S.C. § 922(g)(1). He was sentenced on April 13, 2021 to 72 months in custody. He did not appeal his conviction or sentence. The petitioner now moves to vacate his sentence under 28 U.S.C. § 2255, arguing that the statute under which he was convicted is unconstitutional. Because his claim was filed out of time, the petitioner's motion to vacate his sentence will be dismissed.

Promptly after a motion under 28 U.S.C. § 2255 is filed, the Court must undertake a preliminary review of the petition to determine whether “it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the movant is not entitled to relief.” Rule 4(b), Rules Governing Section 2255 Proceedings. If so, the petition must be dismissed summarily. *Ibid.*; see *Matthews v. United States*, 11 F.3d 583, 585 (6th Cir. 1993) (stating that district courts have a duty to screen out petitions that lack merit on their face). The Court has undertaken the review required by Rule 4 and concludes that the petition must be dismissed.

A federal prisoner challenging his sentence under section 2255 must show that the sentence “was imposed in violation of the Constitution or laws of the United States,” the sentencing court lacked jurisdiction, the sentence exceeds the maximum penalty allowed by law, or it “is otherwise

subject to collateral attack.” 28 U.S.C. § 2255(a). And he “must allege either: ‘(1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid.’” *Short v. United States*, 471 F.3d 686, 691 (6th Cir. 2006) (quoting *Mallett v. United States*, 334 F.3d 491, 496-97 (6th Cir. 2003)).

However, motions filed under this statute are subject to a one-year statute of limitations. That period runs from the latest of:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f). When a federal prisoner does not pursue a direct appeal of his conviction or sentence, the judgment of conviction becomes final, and the one-year limitations period begins to run when the 14-day period for filing a notice of appeal under Federal Rule of Appellate Procedure 4(b)(1) expires. *Sanchez-Castellano v. United States*, 358 F.3d 424, 427-28 (6th Cir. 2004).

Presley did not pursue a direct appeal of his conviction, so his conviction became final 14 days after the judgment of sentence was entered on April 14, 2021, that is, on April 28, 2021. His motion to vacate his sentence was filed on July 8, 2024, well beyond one year after his conviction became final. His motion is untimely under section 2255(f)(1).

Presley asserts in his motion that the Supreme Court’s decision in *New York Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), renders his conviction under 18 U.S.C. § 922(g)(1)

unconstitutional. *Bruen* was decided on June 23, 2022, again more than one year before Presley filed his present motion. Moreover, the Supreme Court has not “made [the case] retroactively applicable to cases on collateral review,” so the motion is untimely under section 2255(f)(3).

No other triggers that would reset Presley’s limitation period is apparent from the record.

Because the motion is untimely, it must be dismissed under the Court’s screening authority. The Court expresses no opinion on the merits of Presley’s claim, except to say that the Court has rejected in previous recent writings facial and as-applied attacks on the constitutionality of 18 U.S.C. § 922(g)(1). *See United States v. Jones*, No. 23-20275, 2024 WL 3297060 (E.D. Mich. July 2, 2024).

Invoking “actual innocence,” Presley argues that the Court may reach his claim without regard to the statute of limitations, but he has “failed to identify a binding holding of the Supreme Court or Sixth Circuit” suggesting that he was convicted under an unconstitutional statute. *Phillips v. United States*, 734 F.3d 573, 585 (6th Cir. 2013). Neither the Supreme Court nor the Sixth Circuit have held section 922(g)(1) unconstitutional facially or as applied to individuals similar to Presley. And he offers no other justification that would provide a basis to equitably toll the limitations period. The petitioner’s motion will be dismissed.

Because Presley filed his motion out of time, and there is no basis to toll the limitations period, the record in this case plainly demonstrates that he “is not entitled to relief.” Rule 4(b), Rules Governing Section 2255 Proceedings.

Accordingly, it is **ORDERED** that the defendant’s motion to vacate his sentence (ECF No. 29) is **DISMISSED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: July 9, 2024